

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the matter of:)	
)	
Creation of a Low Power Radio Service)	MM Docket-99-25
)	
Amendment of Service and Eligibility Rules)	MB Docket 07-172
for FM Broadcast Translator Stations)	RM-11338
)	

REC NETWORKS
REPLY COMMENTS
AND PETITION FOR RULEMAKING

Introduction

1. REC Networks (“REC”), an unincorporated entity through its founder Michelle (Michi) Eyre is a long-time proponent for the Low Power FM (LPFM) radio service from the original petitions for the service through today and into the future. REC is best known for our free self-service broadcast tools including the Low Power FM Search Tool as well as providing education regarding the Low Power FM Radio Service as well as other broadcast services¹. REC believes in a citizen’s access to the airwaves.

2. First of all, REC thanks the Commission for extending the reply comment period as it has allowed REC and other entities the opportunity to develop a full and compete record on this proceeding. In these *Reply Comments*, REC addresses the various issues raised by other commenters in this proceeding.

3. In these *Reply Comments*, REC responds to comments made by others and reinforces REC’s positions on various issues regarding the disposition of Auction 83 FM translator application and FM translator service rules. In addition, we are also forwarding a *Petition for Rulemaking* on various changes that we would like considered at the time when the *Further Notice of Proposed Rulemaking* is issued to implement section 3 of the Local Community Radio Act (LCRA) which includes the elimination of the third-adjacent channel requirement.

¹ - <http://www.recnet.com/lpfm> - <http://lpfm.ws> – <http://lpfm2012.com>

DISPOSITION OF AUCTION 83 APPLICATIONS

The Commission proposed “Channel Floor” concept (modified by the Joint Commenters) is still the best method based on those proposed in the FNPRM

4. While REC feels that our original 2x70 plan is truly the best method of assuring that there is room for both LPFM and FM Translators to co-exist, we do digress that the plan requires significant Commission resources and could put a summer 2012 filing window date in jeopardy. With that in mind, REC along with our allies Common Frequency and Prometheus Radio Project (collectively, the “joint commenters”) have invested a lot of time and effort into doing a thorough analysis of the Commission’s “Option 3”, the market-based “channel floor” proposal. In our comments, we have noticed a few potential issues with the software as well as the data that was provided with the software. We also took issue with the size of the study area. The Joint Commenters felt that the 30 x 30 minute study area for most large, medium and small markets were over proportionate and did not accurately represent the urban areas they intended to protect. Both REC and Prometheus provided maps demonstrating the Census Urbanized Areas in respect to the 30 x 30 minute study area as well as a 20 x 20 study area. In most cases, the urbanized area fit well into the 20 x 20 study area. The Joint Commenters had determined that the use of a 30 x 30 minute study area in most markets would actually show availability in rural areas that would not benefit the urbanized portion of the study area. In fact, this availability would foreclose on LPFM opportunities in the urbanized area².

5. The National Association of Broadcasters (“NAB”) supports that existing LPFM stations within the market be considered even if outside the study area³ (referred to in some comments as the “grid”). Educational Media Foundation (“EMF”) was receptive to the “channel floor” concept but felt that the entire media market be studied, not just a 30 x 30 minute area⁴. EMF also feels that potential “locations” for LPFM stations apply to the channel floors. We have also

² - Amherst Alliance, a LPFM advocate, also encourages the Commission to look at other proposals such as those by REC (Joint Commenters). Amherst comments at 2.

³ - NAB Comments at 14.

⁴ - EMF Comments at 7.

heard from Mediawatch⁵, an organization that is based in Santa Cruz, a community that is part of the Monterey-Salinas-Santa Cruz hyphenated market. Their market has been declared a “process” market as the Commission, using the 30 by 30 minute study area shows 6 channels, which would mean that translator applications would be processed thus removing hope for Santa Cruz, a progressive community, through a significant history of pirate radio operations, has demonstrated the need for local community radio in their area.

6. REC feels that the intent of Congress in the LCRA was to utilize FM translators and LPFM stations, both being “equal in status” to their original intentions. FM translators to provide FM radio service into areas that would not otherwise receive FM radio service due to terrain obstruction or other technical reasons and LPFM, a service created in part, to bring local voices back to local communities. For that reason, we do not feel that rural availability should be taken into consideration where it comes to availability in the urbanized areas. Likewise, the existence of an LPFM station within the market but outside the study area should not count against the central urban area. We also interpret the LCRA that it only applies to new licenses. The translators that are still pending have not been granted or constructed, therefore, they are not licenses.

“Hyphenated” Arbitron Markets may require special handling.

7. We were moved though by the comments of Mediawatch because they indirectly have brought up a major shortcoming of the concept of using the geographic center of media markets to do a “grid” study and that is the treatment of “hyphenated” markets⁶. One of the reasons why REC was anxious to obtain the geographic coordinates that the Commission used to determine their 30 x 30 minute studies was that were wanting to see how they would handle “hyphenated” markets. “Hyphenated” markets such as Salisbury-Ocean City, MD, which covers two distinct communities that are 30 miles apart from each other. In the case of Salisbury-Ocean City, MD,

⁵ - Letter from Ann J. Simonton, Director and Founder of Mediawatch.

⁶ - REC considers a “hyphenated” market as one where two or more distinct communities are combined to form an Arbitron media market. It may have been possible at one time that these communities may have been separate markets but due to the terrain in the area, it may be possible that full service stations within the market counties can be heard in the entire designated market.

the Commission used the geographic center of Salisbury, MD to perform the 30 x 30 minute study and likewise, the Joint Commenters used that same location for our 20 x 20 minute study. In both cases, the number of LPFM channels available exceeded the channel floor and therefore, Salisbury-Ocean City, MD has been declared a “process” market.

8. REC did a 30 minute by 30 minute study at the geographic center point of Ocean City, MD. Our study has shown that within this study area, there are only 5 possible channels for LPFM with the closest channel being just over 4 km from the city center. Using the 20 minute by 20 minute methodology proposed by the Joint Commenters, 4 possible channels would be available. If Worcester County, Maryland and the eastern portion of Sussex County, Delaware (as defined on the Arbitron 2010 Market Map) were split off from Wicomico and Somerset Counties, Maryland as well as the western portion of Sussex County, Delaware to form an Ocean City “sub-market”, this would dismiss translators in Bishopville, MD⁷ and Roxanna, DE⁸ and would open channel 231L1 (94.1 MHz) for LP100 use at the center point for Ocean City, MD.

9. In the case of Mediawatch in Santa Cruz, CA, we had found if Santa Cruz County was made into a sub-market, there would only be 2 channels available and therefore would become a “dismiss” market under both the Commission’s and the Joint Commenter’s methodology. However, there is only one pending translator in Santa Cruz County in Watsonville⁹ which would have no bearing on the availability of LPFM in Santa Cruz. Every potential channel in Santa Cruz is blocked as a result of full service stations¹⁰ including those from the San Francisco metropolitan area. The only potential hope for Santa Cruz is the expansion of the FM broadcast band to include 76-88 MHz or the future implementation of a Low Power AM service.

⁷ - Facility ID 141387, application BNPFT-20030312AEV, Priority Radio, Inc.

⁸ - Facility ID 155491, application BNPFT-20030317CDD, Airport Investors LP.

⁹ - Facility ID 142038, application BNPFT-20030317ASD, Mary V. Guthrie.

¹⁰ - While a grid report shows two channels available in the study area, none are available at the city center point. No LP100 channels are available at the city center point, even with second adjacent waivers. At the LP10 level, two channels (251L2 and 271L2) do not show any blocking stations on the second adjacent channel. This alone does not necessarily qualify a channel for a second adjacent channel waiver.

10. REC hopes the Commission takes into consideration areas that while common in the eyes of Arbitron where it comes to calculating ratings are in reality, politically, geographically and economically distinct areas requiring their own evaluation.

Dismissing translators will bring new opportunities to urban and suburban markets.

11. NAB and others¹¹ feel that dismissing FM translator applications would not gain any new LPFM channels in many metropolitan areas and as NAB states, “the fact that an LPFM applicant might seek a second-adjacent channel distance separation waiver in these markets sometime in the future is not a reason to prevent the processing of translator applications¹²”. REC feels that through the second-adjacent channel waiver process which has now been codified into law as an option that the Commission can use would bring LPFM opportunities to most¹³ top-100 market areas where the FCC “Appendix A” report showed no potential LP100 channels. We also note also that just because LP100 channels may not be available, it does not mean that LP10 channels may be available. Also as we have seen through comments by others in this proceeding as well as comments REC has been making for the past decade, there are many changes that can be made to LPFM channel allocations to maximize availability while staying within sound engineering practice. We will touch on our proposals later in these *Reply Comments*.

Consideration for translators in rural areas outside the study area.

12. Early on in this proceeding, we heard from KWMR. KWMR is a station located in Marin County, CA, which is part of the San Francisco metropolitan market. KWMR has a pending application¹⁴ for a translator in Lagunitas, CA, a mountainous rural area in Marin County. This translator would reach an isolated area of Marin County that due to the terrain, would not receive

¹¹ - Hope Christian Church of Marton, Inc. at 2 and WUSB at 2.

¹² - NAB Comments at 16.

¹³ - Off the Top-100 markets where the FCC’s “Appendix A” shows no channels available, we have found that with removing translators, we would see channels open up, mainly through second adjacent waiver in all markets except New York, Chicago, Philadelphia, Trenton and Stamford/Norwalk.

¹⁴ - See BNPFT-20030314ACM, Facility ID 146312.

service. Being formerly based out of Pahrump, Nevada, we understand the community impacts of terrain shielding from metro markets to rural markets. KWMR's application for an FM translator is exactly what a translator should be used for, a rural extension of a broadcast system and not a method to add a de-facto metropolitan FM station to an already overcrowded market.

13. REC is willing to accept a rural exception for FM translators that fit ALL of the following criteria:

- The proposed FM translator is a singleton at the time of the processing opportunity.
- The proposed FM translator must be outside the study area (the 30 x 30 or 20 x 20 grid based on which methodology the Commission decides to use).
- The proposed translator would broadcast a non-commercial primary station and that primary station broadcasts at least 12-hours per day.
- There is overlap between the primary station's (60/57/54 dBu) service contour and the 60 dBu service contour of the translator.
- There must be considerable attributable interest in the ownership of the application as well as the principals of the pending translator application.
- The translator must rebroadcast the primary station that is received through space or through another translator as long as no point along the path between the primary station and the target translator that retransmission through satellite, microwave or internet is involved.
- The station being rebroadcast on the translator must be the analog programming heard on the primary station. (No HD multicast streams)
- The proposed translator does not impact the availability of LPFM channels (including through second adjacent waiver if no channels are currently available) in the study area.

14. In the case of KWMR's translator: It is a singleton, located outside the 30 x 30 study area, the primary station is non-commercial and broadcasts at least 12 hours a day, the station has made a showing that the translator overlaps the primary station's contour and attributable interest has been demonstrated. KWMR plans to use the translator to rebroadcast their primary feed and not an HD stream and the feed broadcast will be received over space. While an REC report shows that there will be at least two second-adjacent channels that will be available in Marin

County within the study area, the granting of this application will have no impact on those two channels being made possibly available in Marin County. In this case, KWMR's translator meets REC's proposed rural exception criteria.

TRANSLATOR SERVICE RULES

Retransmitting multicast streams over analog translators.

15. LPFM advocates¹⁵ as well as Jeff Siebert raise the issue about the use of analog FM translators to rebroadcast the programming of digital multicast (HD-2) streams on FM radio stations and then allowing full translator power under the guise of a "fill-in" station. As Jeff Siebert states in his comments, station owners can "use this to get around ownership caps since translators are not counted towards the limit¹⁶". REC feels that this use of translators is an egregious abuse of the FM translator service. We maintain that the Commission should order all FM translators engaged in this activity to cease retransmission of multicast streams until this can be worked out in a rulemaking proceeding. This is one of the ethical abuses allowed in the very weak rules of the FM translator service. REC's feeling on these issues mirror the arguments of Common Frequency¹⁷ on this issue.

AM Cross-Service Translators

16. LPFM advocates¹⁸, NPR¹⁹ and others oppose additional AM cross service translators until the trafficking issues are resolved. In addition, Prometheus raises localism, ownership and concentration issues²⁰. Common Frequency raises similar issues regarding qualifying criteria for

¹⁵ - Prometheus comments at 34, Common Frequency comments at 3.

¹⁶ - Jeff Seibert comments at 4.

¹⁷ - Common Frequency comments at 8.

¹⁸ - Comments of Prometheus at 6 and 32.

¹⁹ - NPR at 14.

²⁰ - Prometheus at 33.

cross-service translators²¹. Organizations such as NAB and others²² support AM cross service translators citing coverage benefits. We have also heard from minority owners that AM cross service is necessary using case histories involving their own cross service translators²³. REC continues to believe that once trafficking and integrity safeguards are placed in the FM translator service that AM stations that do not have a cross-owned FM station in the same market should be permitted to use FM translators for retransmission.

LPFM FILING WINDOW

17. REC agrees with Prometheus that multiple filing windows may be warranted. We need to make sure that the territory that is designated for each window does not cause disparity to another part of a metropolitan area that is in another state. For example, a filing window where Nebraska and Iowa are in different filing windows and where Nebraska is in the first window may disadvantage Council Bluffs, Iowa because Omaha was allowed to file first. With more urban availability of LPFM, this issue is now more important than ever. REC feels that filing windows that involve large contiguous areas instead of the “scattered states” process in the original LPFM filing window services would be fairer to the advancement of LPFM in urban areas. REC has divided the United States into two contiguous areas. REC has intentionally avoided the Mississippi River as a boundary due to the many major cities on each side of the river. Instead we split the nation by putting the northeast and mid-west in a single district and the southern states, southwest and western states in a second district. REC proposes the two filing windows to be as follows in the states shown in Appendix A.

PETITION FOR RULEMAKING

18. REC feels that we have finally reached a point in the proceeding that we need to consider some significant changes in the LPFM service prior to the opening of the next proceeding that will implement Section 3 of the Local Community Radio Act, specifically the section that

²¹ - Common Frequency at 16.

²² - NAB comments at 2, Catholic Radio Association at 7.

²³ - Power Radio at 2.

removes the third adjacent channel spacing requirement. We feel that our proposals remain within the specific guidelines of the LCRA.

LP-FLEX: Contour-based LPFM

19. While REC continues to support the LP100 and LP10 models of non-directional LPFM stations, we feel that in some situations, especially as LPFM enters the urban arena, a more flexible version of LPFM similar to what is being used for FM translators should be permitted in the LPFM service if the applicant is willing to borne the expense for additional engineering services and directional antennas. With that, REC proposes LP-FLEX. Unlike the “model” LPFM services like LP-100 and LP-250, LP-FLEX has the ability to be placed in locations where full non-directional facilities can’t be placed. LP-FLEX stations can be squeezed into many urban areas and with properly engineered second adjacent channel waivers, LP-FLEX can be placed into the biggest urban areas.

20. If an applicant wishes to use LP-FLEX, they may specify an operating power with parameters not exceeding those of §74.1235(b) of the rules. In other words, up to 250 watts at 32m HAAT in the areas east of the Mississippi River as well as in California south of 40 degrees latitude to provide a maximum 7.3 km service contour and in other areas of the western United States, 250 watts at 107m HAAT, effectively a 13.3 km service contour.

21. REC has examined the wording of Section 3 of the LCRA and how a contour based LPFM service could work. Section 3(b) of the LCRA states that:

In General- The Federal Communications Commission shall not amend its rules to reduce the minimum co-channel and first- and second- adjacent channel distance separation requirements in effect on the date of enactment of this Act between—

(a) low power FM stations; and

(b) full service FM stations.

While the words “minimum distance separation” are used, there is nothing codified in the LCRA that specifies specific facility types such as LP100 or LP10 and there is nothing that restricts the use of directional antennas. With that in mind, we submit that the “minimum distance separation” for purposes of the LCRA in respect to full service FM stations would be the sum of the

interference contour of the LPFM station, the service contour of the full service station and in the case of co-channel and first-adjacent channel, an additional 20 km “buffer zone” annexed to the service contour of the full power station. The 20 km buffer zone was originally placed into the distance computation in the original Report and Order to permit full service stations to make modifications to their facilities while reducing impact to LPFM stations. REC therefore proposes in respect to full service stations, minimum distance separations would be as follows:

In all areas except Puerto Rico & Virgin Islands:

Full Service Station Class	Full Service FM service contour – co-channel and first-adjacent channel	Full Service FM service contour – second adjacent channel	LPFM Interference Contour – co-channel	LPFM Interference Contour – first-adjacent channel	LPFM Interference Contour – second-adjacent channel
B	54 dBu plus 20 km buffer zone	54 dBu	34 dBu	48 dBu	94 dBu
B1	57 dBu plus 20 km buffer zone	57 dBu	37 dBu	51 dBu	97 dBu
All other	60 dBu plus 20 km buffer zone	60 dBu	40 dBu	54 dBu	100 dBu

Puerto Rico & Virgin Islands:

Full Service Station Class	Full Service FM service contour – co-channel and first-adjacent channel	Full Service FM service contour – second adjacent channel	LPFM Interference Contour – co-channel	LPFM Interference Contour – first-adjacent channel	LPFM Interference Contour – second-adjacent channel
B	54 dBu plus 20 km buffer zone	54 dBu	40 dBu	54 dBu	104 dBu
B1	57 dBu plus 20 km buffer zone	57 dBu	40 dBu	54 dBu	100 dBu
A	60 dBu plus 20 km buffer zone	60 dBu	40 dBu	54 dBu	107 dBu

22. The second-adjacent channel separations will also be used for the third adjacent channel education and interference remediation processes mandated in Section 7 of the LCRA. New Jersey will use co-channel.

23. In respect to Full Service stations, LPFM stations operating 101 watts or more should protect the intermediate frequency (IF), 53 and 54 channels added or removed. The 91 dBu contour (50, 50) of each station can't overlap.

24. We feel that LP-FLEX will finally bring some flexibility to the LPFM service, put LPFM closer to a level playing field with FM translators as well as maximize spectrum efficiency. LP-FLEX will provide LPFM proponents with the flexibility to tailor a service that meets the needs of their community. Even with LP-FLEX, we must maintain the LP100 and LP10 in their current "model" as an alternative to the initial extensive engineering requirements of LP-FLEX.

Second adjacent waivers must be made available for original construction permits.

25. Currently, the Commission will allow a second adjacent waiver if there is application activity by a full power station that causes encroachment to an LPFM station and the only channel the LPFM station can relocate to is a channel that is a second adjacent channel. Additional studies will need to be shown that the channel is only short spaced to a second adjacent channel and that the overlap area will cause minimal to no interference to the full power station on a second adjacent channel. For the purpose of the next filing window and to achieve the goals of urban availability, we need to be allowed to ask for second adjacent channels on the original construction permit application where a study shows that there is no interference.

Remove IF Protection Requirement for LP100, LP10 and LP-FLEX under 101 watts.

26. Section §74.1204(g) of the Rules applies to how FM Translators protect full power stations on their intermediate frequencies (IF):

*An application for an FM translator or an FM booster station that is 53 or 54 channels removed from an FM radio broadcast station will not be accepted for filing if it fails to meet the required separation distances set out in Sec. 73.207 of this chapter. For purposes of determining compliance with Sec. 73.207 of this chapter, translator stations will be treated as Class A stations and booster stations will be treated the same as their FM radio broadcast station equivalents. FM radio broadcast station equivalents will be determined in accordance with Sec. Sec. 73.210 and 73.211 of this chapter, based on the booster station's ERP and HAAT. **Provided, however, that FM translator stations and booster stations operating with less than 100 watts ERP will be treated as class D stations and will not be subject to intermediate frequency separation requirements.***

27. Due to HAAT, about half of the LP100 stations operate at less than 100 watts and the remainder operates at 100 watts. We feel that this restriction is unnecessary as it places a burden on LP-100 stations to protect IF while similar FM Translator stations are not required to protect IF. The Commission has apparently made a showing that FM Translators of less than 100 watts do not create issues with their IF channels so therefore, it should be extended to all LP100, LP10 as well as LP-FLEX stations operating at 100 watts or less in respect to domestic FM facilities, both full power and translator. The same change should also be applied to FM Translators in order to maintain equality between the two services. Foreign FM allotments would continue to be protected on the IF channels based on existing international agreement.

Allow prohibited overlap and improved granularity in respect to translators.

28. In respect to FM translators, there is no language in the LCRA that inhibits the Commission from providing some new flexibility in the placement of LPFM stations in respect to translators. If anything, some could use the “equal in status” argument to justify that LPFM protections towards FM translators need to be improved. Currently, LPFM stations are required to protect FM translators on co-channel, first-adjacent, second-adjacent, third-adjacent and IF channels while translators are only required to protect LP100 at the co-channel and first-adjacent channels. FM translators are not required to protect LP10 stations.

29. The current LPFM rules place translators into one of three different “subclasses” based on the translator’s field strength and assumes directional antennas and full field strength. This overprotection does foreclose on some LPFM opportunities. REC proposes to increase the number of translator subclasses to 8 as follows:

Current Rules		REC Proposed		
Size of service contour (km) 60 dBu (50,50)	Total facility records in sub-class	REC sub-class designator	Size of service contour (km) 60dBu (50,50)	Total facility records in sub-class
Less than or equal to 7.3	6,513	D1	Less than or equal to 5.3	1,864
		D2	More than 5.3 but less than or equal to 7.3	4,649
More than 7.3 but less than 13.3	4,794	D3	More than 7.3 but less than or equal to 9.3	1,401
		D4	More than 9.3 but less than or equal to 11.3	1,452
		D5	More than 11.3 but less than or equal to 13.3	1,941
More than 13.3	2,063	D6	More than 13.3 but less than or equal to 15.3	876
		D7	More than 15.3 but less than or equal to 17.3	308
		D8	More than 17.3	879

30. Applying the new sub-classes, the LP100 to FM translator chart would be the following:

REC sub-class	If service contour is between: (km)	Co-channel minimum required	Co-channel fully spaced	First-adjacent minimum required	First-adjacent fully spaced
D1	<5.3	24	24	13	13
D2	5.3-7.3	26	30	15	16
D3	7.3-9.3	28	36	17	19
D4	9.3-11.3	30	51	19	22
D5	11.3-13.3	32	51	21	26
D6	13.3-15.3	34	56	23	28
D7	15.3-17.3	36	60	25	31
D8	>17.3	39	67	28	35

LPFM Protection to LPTV Stations Operating on Channel 6

31. In previous proceedings, REC has mentioned that due to all LPTV Channel 6 stations being assumed to operate at 3kW at 100m HAAT, this causes a substantial overprotection of LPTV stations by LPFM stations. We also note that in Part 74, there is no codified requirement for FM Translators to protect LPTV Channel 6 stations. §74.1205 only refers to “TV Broadcast

Stations” which under Part 73, Subpart E. There also is no mention of any type of protection of FM stations (full power or translator) by LPTV stations operating on Channel 6 in Part 74, Subpart G. However, §73.825 requires LPFM stations to protect TV Channel 6. The requirement that LPFM protects LPTV while FM Translators are not required to make those protections creates an unnecessary bias against the LPFM service and to level the playing field between LPFM and FM Translators as well as in light of several parties with LPFM and full power FM interests considering the reallocation of TV Channel 6 (82-88 MHz) spectrum to sound broadcasting, we feel that this unnecessary and unfair overprotection should be eliminated. Full power DTV stations on Channel 6 deserve and require full facility protection from LPFM and we do not feel that any changes should take place in respect to full power DTV stations.

Use of 87.9, 87.7 and 87.5 as Overflow Channels

32. Historically, 87.9 MHz (Channel 200) has been used as a displacement channel for secondary Class-D FM stations that are forced to change channels as a result of changes in full power FM stations. §73.525 of the rules requires proposed Channel 200 facilities would require the 40 dBu (50, 50) curve of the FM station to not overlap with the 15 dBu (50, 10) curve of the TV station. In addition, §73.501(a) states that Channel 200 can’t be used within 402km of Canada or 320km of Mexico. This substantially limits the area where the channel is available already. The FCC has already granted a waiver for an FM Translator faced with displacement to be moved to Channel 200²⁴. This facility, K200AA in Sun Valley, NV is permitted to operate 28 watts at 143m HAAT creating a 60 dBu service contour of 9km which exceeds the service contour of 5.6km for LP-100 and 7.0km for our proposed LP-250 service. During the DTV Transition, assignments on DTV Channel 6 were undesirable due to the protections required to full power FM stations by the DTV stations as well as the undesirability of VHF Low Band channels while other stations in the market use either VHF High or UHF. This has substantially reduced the post-transition full power TV stations on Channel 6. This means that despite the current international restrictions on the use of spectrum below 88 MHz for sound broadcasting, many new opportunities remain.

²⁴ - See BPFT-20040211AAW – granted February 18, 2004.

33. REC feels that this alternative channel, as well as 87.7 (Channel 199) and 87.5 (Channel 198) should be made available for LPFM, FM Translator and Class-D stations. Many FM radio receivers marketed in the US include these three channels as the FM broadcast band extends as low as 87.5 in Europe. REC feels that it is appropriate to make these channels available for LP100, LP10 and LP-FLEX stations proposing a service contour of 9km or less if a showing can be made that no channels between 201-300 (88.1-107.9) can be made available and that all protections to TV broadcast stations, FM broadcast stations, FM Translators and international limitations are met²⁵.

Eliminate Public Safety-Specific Language from LPFM Rules

34. When the LPFM service was originally established, there were provisions to allow municipal and state governments to operate LPFM stations with no ownership restrictions and a secondary status in the handling of mutually exclusive applications. Some states such as Colorado have built their stations while other states such as New Mexico have allowed all of their granted construction permits to lapse. We do note that a Travelers Information Service already exists in the AM broadcast band under Part 90 of the rules. Under Part 90, an eligible licensee can operate as many stations as they need to. We also note that there is pending rulemaking to expand the scope of AM TIS stations as well as increase their service areas. We feel that with this (AM) spectrum available to governments under Part 90 but not available to potential NCE licensees for similar model low power AM (LPAM) stations, we feel that it is appropriate to grandparent the current TIS stations on LPFM. With that, we feel that there should be rule changes that prohibit multiple-ownership by municipal and state governments. We are not endorsing to remove municipal and state governments from LPFM eligibility, only the “public safety” aspect of the LPFM service. We do also make note that during the original filing

²⁵ - REC is aware that several commenters have endorsed reallocating TV channels 5 and 6 (76-88 MHz) to FM sound broadcasting. REC supports this as a long term solution and should be made a part of a larger plan for future spectrum management and other than the spectrum from 87.4~88.0 on a secondary basis, REC will not propose it at this time but we remain the largest supporter of this spectrum reallocation.

windows, many applicants filed applications claiming the “public safety” eligibility but they were truly not a public safety organization with legal jurisdiction over the area served. We feel that if a municipality or state government wishes to apply for a new LPFM construction permit, it must be to advance an educational program. This will also discourage individuals and other unqualified entities from filing claiming they are a “public safety” organization and not an “educational” organization.

Elimination of the “Student Station” Restriction

35. 10-years ago when we were discussing student-operated LPFM stations licensed to campuses that already have full power FM stations, there were concerns regarding cross-ownership and universities seeing LPFM as an opportunity to pick up additional channels. For these and other concerns, §73.860(b)(4) requires that if an LPFM applicant by a student run station faces competing applications, that the application can be dismissed. In the past 10 years, we have lost many student operated full power FM stations. These stations were either reformatted to exclude student and community in favor of formats that appeal to a higher class of potential underwriter or the stations have been sold to other entities in what some could call NCE consolidation. This is currently happening right now in San Francisco with the pending sale of KUSF to a group owner of stations based out of Southern California²⁶. As a result, the transmitter is being moved off the campus and to a common antenna site with an increase in class and an existing classical music format is replacing a broadcast day of local community voices and diverse music from around the world. REC feels that “college radio” is an ultimate example of a “citizen’s access to the airwaves” which is one of our primary broadcasting goals. While in this case, the University of San Francisco would have no attributable interests, their student union would be eligible for a competitive LPFM license under the current rules but at schools such as the University of Arizona who has 2 FM, 1 AM and 2 TV stations²⁷ and Arizona

²⁶ - See KUSF, BALED-20110125ACE, still pending. (Facing a *Petition to Deny* filed by Friends of KUSF).

²⁷ - The University of Arizona is licensee of KUAZ(AM), KUAT(FM), KUAZ(FM), KUAT(TV) and KUAS(TV). There is also a student operated station “KAMP” operates on the internet as well as on AM carrier current. KAMP filed during the LPFM window (BNPL-20010603ADH) and was dismissed due to competing applications. Unfortunately, all of the other mutually

State University which does not have any radio holdings but has a TV station²⁸ should be eligible for a student operated LPFM station. These LPFM stations should be able to compete with other LPFM applicants in a comparative review and should be allowed, if necessary, to share time with other LPFM station as a good neighbor. A lot has changed in 10 years and we feel that student operated LPFM that is licensed to the student government and not the university should have a full opportunity to be a part of LPFM's success story.

Codify the LPFM 50-Watt Restriction Near Mexico

36. The current FM broadcasting agreement between the United States and Mexico limits Low Power FM stations within 125km of the common border to 50 watts in the direction of Mexico²⁹. Since LPFM is non-directional in nature, the Commission has made it a policy to limit LPFM stations to 50 watts in all directions. This restriction is currently codified in Part 74 for FM Translators but while enforced, is not codified for LPFM in Part 73. While REC and others have been educating the public on this restriction for border LPFM, we feel that it would be in the public interest if this codified in Part 73 to affirm to potential applicants that this restriction does exist.

CONCLUSION

37. We are getting closer to a long overdue expansion of the LPFM service. In order for us to proceed with that, we must finish the handling of the Auction 83 FM Translator applications. The Auction 83 filing window has exposed many of the exploits of the currently codified Part 74 rules and with Commission's current tolerance of full power stations adding more stations into a market without ownership caps through using translators and HD multicast, it is obvious that

exclusive applicants were dismissed. We feel that if KAMP was permitted to remain in the group, they would have been able to construct the station.

²⁸ - Arizona State University is the licensee of KAET(TV). There is also a student radio station "KASC-The Blaze" that operates on campus. While the ASU Tempe campus was excluded from LPFM in the past (due to third adjacent channels and no waiver process), we feel that a station may be possible there through a second adjacent channel waiver.

²⁹ - See *Agreement Between the Government of the United States of America and the Government of the United Mexican States relating to the FM Broadcasting Service in the Band 88-108 Mhz.* Annex 1 at 2.1.5

Part 74 is in need of some serious updating. We are also deeply concerned about the abuse that the Commission has created with the cross-service AM translator rules. While we support minority owned AM stations with no other FM radio holdings being able to put their signals on an urban FM translator, this has been abused by Clear Channel and others who exploit the “fill-in” rule to increase the power to 250 watts regardless of antenna height. REC is currently working with an LPFM station in Texas and a listener in Minnesota who have been victimized by Clear Channel programming AM stations on FM translators. Clear Channel has HD capacity and that’s where their AM simulcasts should be, not on overpowered FM translators.

38. While not customary to advance new issues in *Reply Comments*, we felt that it was necessary to get on the record the current direction of REC in advancing the LPFM service. Commissioner Copps, when approving this *Notice of Proposed Rulemaking*, he spoke very highly of building a contour-based model for LPFM. Despite the way that the LCRA was written, we feel that a contour-based model is possible for LPFM but at the same time, we must also keep the traditional avenue of LPFM service available for those with limited resources. We also proposed to eliminate some administrative rules that are no longer necessary, especially with the trend of student operated college radio stations turning into a single format to be in a better position to solicit donations from the community’s social elite.

39. The future of localism is in the hands of the Commission. We implore the Commission to make the right decisions that will create more choices and more voices.

Respectfully submitted,



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APPENDIX A

STATES PROPOSED TO BE IN EACH LPFM FILING WINDOW

First Filing Window Area	Second Filing Window Area
Maine	Florida
Vermont	Georgia
New Hampshire	South Carolina
Massachusetts	North Carolina
Rhode Island	Tennessee
Connecticut	Mississippi
New York	Alabama
Pennsylvania	Arkansas
New Jersey	Louisiana
West Virginia	Oklahoma
Virginia	Texas
Maryland	New Mexico
Delaware	Arizona
District of Columbia	Colorado
Ohio	Utah
Kentucky	Wyoming
Michigan	Montana
Illinois	Idaho
Indiana	Washington
Missouri	Oregon
Iowa	Nevada
Minnesota	California
Wisconsin	Hawaii
Kansas	American Samoa
Nebraska	Guam
South Dakota	CNMI
North Dakota	Puerto Rico
Alaska	Virgin Islands

APPENDIX B

MARKETS IDENTIFIED ON THE FCC APPENDIX A REPORT AS THOSE WITH NO AVAILABLE LPFM CHANNELS (IN A 30' X 30' STUDY AREA) AND CHANNELS THAT WOULD BE POTENTIALLY AVAILABLE AFTER TRANSLATORS ARE DISMISSED THROUGH SECOND ADJACENT WAIVER PROCESS

Market	New Channels	Closest to city center (km)
1. New York	0	N/A
2. Los Angeles	4	7.2
3. Chicago	0	N/A
4. San Francisco	6	10.2
8. Philadelphia	0	N/A
9. Washington DC	9	At city center
10. Boston	8	6.9
11. Detroit	3	13.7
12. Miami	6	At city center
13. Seattle	7	At city center
14. Puerto Rico ³⁰	3	At city center
22. Baltimore	4	10.2
30. Salt Lake City	3	10.8
64. Honolulu	12	1.7
76. Akron	6	1.4
143. Trenton	0	N/A
203. Danbury	2	6.7

Availability based on 20 minute by 20 minute study area.

³⁰ - Report does takes into consideration the special spacing rules in Puerto Rico and Virgin Islands.

APPENDIX C

MARKETS IDENTIFIED ON THE JOINT COMMENTERS REPORT AS THOSE WITH NO AVAILABLE LPFM CHANNELS (ONLY IN THE 20' X 20' "INNER-ZONE" STUDY AREA) AND CHANNELS THAT WOULD BE POTENTIALLY AVAILABLE AFTER TRANSLATORS ARE DISMISSED THROUGH SECOND ADJACENT WAIVER PROCESS

Market	New Channels	Closest to city center (km)
7. Atlanta ³¹	14	16.6
23. Portland, OR	4	9.1
26. Riverside-San Bernardino	1	10.8
29. Cleveland	14	At city center
34. San Jose	2	10.5
38. Milwaukee	13	At city center
40. Middlesex	1	16.9
69. Allentown	0	N/A
77. Wilmington	3	8.8
101. Boise	15	At city center
105. York	5	At city center
121. Reno	6	At city center
123. Bridgeport	1	12.3
126. Youngstown-Warren	5	4.5
131. Reading	0	N/A

Availability based on 20 minute by 20 minute study area.

³¹ - The water file provided by the FCC for Atlanta was incorrect. The file given made Atlanta look more like a coastal community like Augusta, GA. Our report is based on this defective water file. It is very possible that more channels and/or availability closer to the city center is available.